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### Résumé de l'article

Entre la perte en 1775 de la destination américaine originale et l'ouverture d'une colonie pénitentiaire en Nouvelle-Galles du Sud en 1787, les autorités anglaises se heurtèrent à des difficultés lorsqu'elles voulurent reprendre la transportation outre-mer régulière et efficace des prisonniers. Si les historiens du droit criminel connaissent bien ces problèmes, ils en savent par contre beaucoup moins sur la crise des détenus que connut l'Irlande à la même époque. L'article ci-dessous vient combler cette lacune en se penchant sur l'institution de la transportation des prisonniers hors de l'Irlande au XVIII<sup>e</sup> siècle. Il examine plus particulièrement une série de trois incidents dramatiques qui se déroulèrent à la fin des années 1780 et aux cours desquels des détenus irlandais furent abandonnés sans scrupule (mais toutefois pas illégalement) au Cap-Breton, à Terre-Neuve et dans les îles Sous-le-Vent. L'auteur explique d'abord que, dans le contexte de l'époque, de telles pratiques ne devaient pas entièrement surprendre, étant données les grandes difficultés qu'avait souvent posées la transportation des détenus hors de l'Irlande, et ce avant même 1775. Il suggère par la suite que la décision ultérieure de Londres de prendre en main la direction de la transportation des prisonniers irlandais fut dictée par le changement des perceptions que l'État britannique se faisait de ses dimensions tant nationales qu'impériales.

# Irish Convict Transportation and the Reach of the State in Late Hanoverian Britain

SIMON DEVEREAUX

**D**URING THE PAST DECADE, TWO MAJOR STUDIES HAVE REVEALED THE indispensable role of transportation in the array of English penal practices during the eighteenth century.<sup>1</sup> Far less closely examined, however, has been the role of convict transportation from Ireland during this same period. Although it appears to have been carried on at a rate proportionate with its share of the total population of the British Isles, the transportation of Irish convicts before 1791 has invariably been treated as an appendix to or a passing thought in most studies of British (that is to say, overwhelmingly English) practices.<sup>2</sup> In fact, a study conducted with the same precision as has been applied to the English case, is probably impossible given the destruction of the Irish Public Record Office in 1922 and the extremely limited character of Irish parliamentary material prior to the Union of 1801.<sup>3</sup>

This article deals with the implications that the need to maintain convict transportation from Ireland had for officials in London during the latter part of

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- 1 J.M. Beattie, *Crime and the Courts in England, 1660-1800* (Princeton, NJ, 1986), Chs. 9-11; A. Roger Ekirch, *Bound for America: The Transportation of British Convicts to the Colonies, 1718-1775* (Oxford, 1987), Chs. 1, 8.
- 2 Abbot Emerson Smith, *Colonists in Bondage: White Servitude and Convict Labour in America, 1607-1776* (Gloucester, MA, 1965; rep. of 1947 ed.), 133-5; Ekirch, *Bound for America*, 24-5, 46-7, 83-5, 88; Wilfrid Oldham, *Britain's Convicts to the Colonies* (Sydney, 1990), 167, 202-4. Scotland transported convicts as well but in much smaller numbers and on a different legal basis; see Ekirch, *Bound for America*, 25-6, 31-2, 34-5, 85-6, 88-9. I use "Britain" to refer to England, Wales and Scotland, the latter joined to the others by the 1707 Act of Union, and "England" for England and Wales. The latter may seem an impolitic conjunction, but it is justified here by the unity of the two in terms of the administration of criminal law by comparison with the continued distinctiveness of Scottish practices.
- 3 I have been unable to consult the 4th edition of the *Irish Journals of the House of Commons (JHC)*, which is the one most often used by scholars. The volume and pagination of my citations is that of the 2nd and 3rd editions, which extend only as far as the end of the 1794 session. Dates are given in old style (where appropriate), but the year is taken to begin on 1 January.

the eighteenth century. Some aspects of this story have been touched on by other historians. Most notably, Ged Martin has suggested that the abandonment of 114 Irish convicts in Newfoundland in July 1789 played a major part in the final decision of the British government to pin all of its hopes for a new destination for convicts on New South Wales.<sup>4</sup> My aims here are twofold: first, so far as is possible, to describe the system of Irish convict transportation that prevailed during most of the eighteenth century; and secondly, to consider its broader implications for British state formation. In particular, I want to argue that a series of events in 1788-90 and the reactions to them in London reflected some major shifts in the ideas of British statesmen about the nature and the administrative reach of the British state both at home and overseas.

### **Irish Convict Transportation Before the 1780s**

How did Irish officials come to be implicated in the abandonment of convicts in Newfoundland in 1789, as well as others on Cape Breton in December 1788 and in the Leeward Islands in January 1790? The brief answer is that, as in Britain, the cessation of transportation to America following the outbreak of the Revolutionary War in April 1775 ultimately led to a crisis of overcrowding in Irish gaols. But before considering how the dire circumstances of the 1780s promoted a resort to such desperate expedients, we should consider what little is known of the transportation of Irish convicts before 1775.

The criminal justice system of Ireland was structured in essentially the same way as that of England.<sup>5</sup> As in England, the transportation of reprieved felons had been attempted for some time before efforts were made to systematise the practice in the early eighteenth century.<sup>6</sup> In particular, an Irish statute of 1704 had applied transportation "to any of her Majesty's plantations beyond the seas" to certain categories of convicted felons, although its provisions were largely repealed only six years later.<sup>7</sup> However, Ireland's experience differed in so far as authorities there seem to have placed a peculiar emphasis on vagrancy. A statute of 1707 imposed transportation – now specifically "to some of her Majesty's plantations in America" – on

4 Jed [i.e., Ged] Martin, "Convict Transportation to Newfoundland in 1789," *Acadiensis* 5 (1975): 84-99 (esp. 99).

5 For criminal justice in eighteenth-century Ireland, see R.B. McDowell, *Ireland in the Age of Imperialism and Revolution, 1760-1801* (Oxford, 1979), 63-83; S.J. Connolly, "Albion's Fatal Twigs: Justice and Law in the Eighteenth Century," in *Economy and Society in Scotland and Ireland, 1500-1939*. Rosalind Mitchison and Peter Roebuck, eds. (Edinburgh, 1988), 117-21; and S.J. Connolly, *Religion, Law and Power: The Making of Protestant Ireland* (Oxford, 1992), Ch.6.

6 J.W. Blake, "Transportation from Ireland to America, 1653-60," *Irish Historical Studies* 3 (1943): 267-81; Ekirch, *Bound for America*, 24; Beattie, *Crime and the Courts*, 472-83, 500-2.

7 2 Anne, c.12 [I] (quote from s.2); 9 Anne, c.6 [I], s.8. Irish and British statutes dating from before the Union of 1801 are identified by "I" and "GB" respectively.

all loose, idle vagrants, and such as pretend to be Irish gentlemen, and will not work or betake themselves to any honest trade or livelihood, but wander about demanding victuals, and coshering from house to house amongst their fosterers, followers, and others, and also loose persons of infamous lives and characters, . . . unless they give sufficient security to be of the good behaviour . . .

This statute continued in force throughout the rest of the eighteenth century.<sup>8</sup> Using figures compiled by the Irish parliament in 1744 – the only substantial data that we have from any period of the Irish convict trade before 1775 – Roger Ekirch has determined that 1,938 convicts were transported from Ireland between 1737 and 1743. The offences involved can be determined in only 990 instances, but of these just over half were vagrants rather than felons.<sup>9</sup> This was a striking distinction indeed from the system prevailing in Britain at the same time, in which the latter appear to have been the major objects of convict transportation.<sup>10</sup> Unfortunately, I am unable to determine how long any peculiarly Irish concern for the transportation of vagrants persisted.

Then, in 1719, and apparently following the lead of its British counterpart the year previously, the Irish parliament passed legislation providing “transportation to any part of America” for those convicted of felony offences. It did so, first, as a condition of pardon for any capitally convicted offender, but also as a punishment in the first instance for offenders convicted of grand and petty larceny alike.<sup>11</sup> Of these latter two offences, only grand larceny was a felony, and in England it had largely ceased to be treated as such by the second decade of the eighteenth century. This second provision of the transportation law therefore extended the reach of severe punishment into a markedly less serious class of offences.<sup>12</sup>

The difference in the justificatory preambles between the British and Irish measures is interesting. Both noted the failures of existing laws to deter the commission of felonies, and both noted the failure of previous laws allowing for the transportation convicts to the West Indies actually to be carried into

8 6 Anne, c.11 [I], s.1. No term was affixed until a revision of 1735 set it at seven years (9 Geo.II, c.6 [I]).

9 Ekirch, *Bound for America*, 31; Connolly, *Religion, Law and Power*, 223, 232.

10 Transportation from England to the plantations of “rogues, vagabonds and sturdy beggars” deemed to be “incorrigible” by magistrates had been facilitated by an Act of 1662 (13 & 14 Car.II, c.12 [GB], s.23) and was reconfirmed in 1744 (17 Geo.II, c.5 [GB], ss.9, 28), but there is little evidence of their being extensively enforced after the late seventeenth century by comparison with the transportation of criminal convicts. See Smith, *Colonists in Bondage*, 136-51, 165-70; and Joanna Innes, “The Role of Transportation in Seventeenth and Eighteenth-Century English Penal Practice,” in *New Perspectives in Australian History*. Carl Bridge, ed. (London, 1990), 5.

11 4 Geo.II, c.11 [GB], s.1; 6 Geo.I, c.12 [I], ss.1, 3.

12 Indeed non-capital felons routinely composed one-half or more of all those transported from England until the end of the 1760s. For the scope of English transportation down to 1775, see Beattie, *Crime and the Courts*, 182, 506-19, 538-48, 560-5.

effect. However, the English act then proceeded to apply transportation on the grounds that such offenders might otherwise be "brought to a shameful and ignominious death" who "by their labour and industry might be the means of improving and making the [American] colonies and plantations more useful to this nation . . . ." By comparison, the Irish law cited more exclusively domestic concerns: "several gaols of this kingdom are at this time filled with such offenders; which is not only an encouragement to such to go on in their wicked practices, but is a great charge to such cities and counties, where such persons lie confined . . . ." <sup>13</sup> Of course, such difficulties had also been factors in the reasoning of English legislators. But, where it has been demonstrated that the English measure was the outcome of several decades of debate and experimentation in the search for an effective secondary punishment, we are a long way from identifying any such sustained concern and activity behind its Irish counterpart. <sup>14</sup>

The more striking distinction between the English and Irish Transportation Acts of 1718 and 1719, however, is to be found in their subsequent administration. By comparison with the English model, whose effectiveness was felt immediately and which required virtually no legislative adjustment until 1776, the enforcement of the Irish law ran into great difficulties almost from the outset and required many subsequent amendments. This was largely a result of the immense difference in the scale of resources that the respective governments were willing and able to bring to bear in making the system work. In England, the full weight of the central government was placed behind the Act of 1718. During the late seventeenth and early eighteenth centuries, the English state had brought into being a vast apparatus of taxation and national credit in order to finance its wars against the ambitions of France to dominate the European continent. <sup>15</sup> Britain's participation in these wars had ended in 1714, and the central government brought a measure of its now formidable fiscal power to bear on the transportation of criminals, taking upon itself the costs of transporting convicts from London, Middlesex and the Home Counties, an area that regularly accounted for just over half of all English transports down to 1775. Moreover, the government contracted with only one merchant for its share of the convict trade, which helped the trade's overall management in that region and ensured the actual removal of its transports. <sup>16</sup>

13 4 Geo.II, c.11 [GB], s.1; 6 Geo.I, c.12 [I], s.1.

14 Beattie, *Crime and the Courts*, 479-503.

15 P.G.M. Dickson, *The Financial Revolution in England: A Study in the Development of Public Credit, 1688-1756* (London, 1967); John Brewer, *The Sinews of Power: War, Money and the British State, 1688-1783* (London, 1989).

16 Beattie, *Crime and the Courts*, 502-6, 508; Ekirch, *Bound for America*, 47-49, 70-82. However, the colonial demand for convict labour appears to have been sufficiently strong that few difficulties were had in facilitating the removal of transports from areas outside the metropolis and the Home Counties as well. See Kenneth Morgan, "The Organization of the Convict Trade to Maryland: Stevenson, Randolph and Cheston, 1768-1775," *William and Mary Quarterly* 3rd series, 42 (1985): 201-27.

By comparison, although Dublin and the surrounding province of Leinster supplied nearly half of all Irish transports between 1737 and 1743, Irish statutory provisions left the burden of bearing costs and of contracting with merchants wholly in the hands of county authorities.<sup>17</sup> This strategy was unavoidable given the extremely limited fiscal resources of the Irish state during the early eighteenth century. Such limited resources were a function, in part, of the Irish economy, which was stagnant during the early eighteenth century and did not begin to pick up until after 1730.<sup>18</sup> A further limitation on the Irish tax base before 1770 was the significant proportion of the national income going overseas as rents to absentee landlords.<sup>19</sup> The limited capacities of the eighteenth-century Irish state may also have reflected what one recent historian has described as the "limited and dependant" role of the Irish parliament, given the various means by which British authorities exercised oversight of it, although other historians have expressed reservations about the precise extent of those limits and dependence.<sup>20</sup>

A simpler explanation for the failure of the Irish government to develop the same fiscal resources as its British counterpart was the sustained resistance in Irish political culture to the development of financial institutions of the kind and extent of those that had been developed in England since 1690. A strong and vibrant opposition existed to the creation of large public institutions for raising and maintaining credit on the grounds that they must inevitably have a corrupting influence on the independence and patriotism believed to be the ideal characteristics of both a member of parliament and a patriotic citizen in general.<sup>21</sup> Such opposition had existed in England as well, but so too had an external

17 Ekirch, *Bound for America*, 47, 83-5, 88.

18 L.M. Cullen, *An Economic History of Ireland since 1660* (London, 1972), 36-49, Chs.3-4; L.M. Cullen, "Economic Development, 1691-1750," in *A New History of Ireland, Vol.4: Eighteenth-Century Ireland, 1691-1800*. T.W. Moody and W.E. Vaughan, eds. (Oxford, 1986), 123-30, 146-51; L.M. Cullen, "Economic Development, 1750-1800," in *ibid.*, 159-62, 185-8.

19 Samuel J. Fleming, "The King's Purse and the Absentee's Pocket in Eighteenth-Century Ireland," in *Crisis in the "Great Republic": Essays Presented to Ross J.S. Hoffman*. Gaetano L. Vincitorio, ed. (New York, 1969), 47-84; R.B. McDowell, "Ireland in 1801," in *New History of Ireland, vol.4: Eighteenth-Century Ireland*, 698-701.

20 R.F. Forster, *Modern Ireland, 1600-1972* (London, 1988), Ch.10, esp. 236-40 (quote at 236). But see also David Hayton, "Walpole and Ireland," in *Britain in the Age of Walpole*. Jeremy Black, ed. (London, 1984), 95-119 (esp. 96-97); J.L. McCracken, "The Political Structure, 1714-60," in *New History Of Ireland, Vol.4: Eighteenth-Century Ireland*, 57-66, 71-8; Robert F. Burns, *Irish Parliamentary Politics in the Eighteenth Century*, 2 vols. (Washington, D.C., 1989-90); Connolly, *Religion, Law, and Power*, Ch.4; S.J. Connolly, "Varieties of Britishness: Ireland, Scotland and Wales in the Hanoverian State," in *Uniting the Kingdom? The Making of British History*. Alexander Grant and Keith J. Stringer, eds. (London, 1995), 201-2.

21 Jacqueline Hill, *From Patriots to Unionists: Dublin, Civic Politics and Irish Protestant Patriotism, 1660-1840* (Oxford, 1997), Chs.3-4 (esp. 87-8).

impetus in the form of foreign policy concerns and their implications for the deepest considerations of church and state. The circumstances in early eighteenth-century Ireland were markedly different, and in 1721 a major scheme to create a national bank was defeated.<sup>22</sup>

The only way Irish legislators could put teeth into the Transportation Act of 1719 was to impose severe penalties on the major participants: the convicts themselves; the local authorities who contracted for their removal; and the captains of the vessels contracted to carry them to America. Arrangements on these matters were so uncertain that the original Act of 1719 had to be amended three times within its first decade of operation. The first of these amendments addressed the need to underline the severity of transportation by assigning punishments for those who returned before the expiration of their sentence. Whereas the English transportation law had required capital conviction and execution in such cases, the Irish statute of 1719 had only made it optional.<sup>23</sup> However, an amendment of 1722 noted that:

the laws in being have not proved effectual for the suppressing of robberies, burglaries, and other felonies . . . and some felons and vagabonds, who have been ordered to be transported, have already, and others may hereafter, come on shore, and return . . . before or after they have been actually transported to America . . . .

The Act now explicitly required death for those who either escaped from custody or returned before the expiration of their term.<sup>24</sup>

The next two amendments were primarily concerned with reinforcing the procedures by which local authorities contracted for the removal of their convicts, the details of which had been left largely unspecified in the original act. Citing the "great numbers of persons" under sentence of transportation who continued to be "confined in the several gaols of this kingdom," many of whom had subsequently escaped, an act of March 1726 assigned specific costs that the counties were obliged to pay to contractors for the transportation of Irish offenders (forty shillings for a capital convict and twenty shillings for all others). A further provision required that capital offenders under sentence of transportation for seven years or more who refused that condition of pardon should be sentenced to death and subsequently executed, while all others under sentence of transportation who refused to accept indentured servitude were to be whipped publicly three times and imprisoned until such time as they could be

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22 Michael Ryder, "The Bank of Ireland, 1721: Land, Credit and Dependency," *Historical Journal* 25 (1982): 557-82.

23 4 Geo.I, c.11 [GB], s.2; 6 Geo.I, c.12 [I], s.4.

24 8 Geo.I, c.9 [I], s.1.

transported.<sup>25</sup> A further act of April 1730 (which also extended transportation to “the pernicious and abominable crimes of forgery, perjury, and subornation of perjury”) recognised that the amounts allowed for the transportation of each convict were “so very small, that the masters of Ships and vessels . . . refuse to carry them to America, by which means great numbers of them are confined in gaols . . . to the great charge of the county.” The amount that counties might spend on any and each transportable convict was raised to a maximum of £6.<sup>26</sup>

By the 1740s, a more specific and alarming difficulty had emerged concerning the masters of vessels contracted to transport convicts to America. In the winter of 1743-44, the Irish House of Commons requested and received lists of all felons and vagrants sentenced to transportation during the preceding seven years. Even before a Commons Committee began to process these returns to determine “how many Persons were actually transported, how many died or escaped before Transportation, how much Money had been raised for these purposes, and to whom paid,” a new legislative measure was underway.<sup>27</sup> The Act passed in February 1744 asserted in its preamble that:

the several acts of Parliament, passed in this kingdom for transporting felons and vagabonds to his Majesty’s plantations in America, have been eluded, and in a great measure rendered ineffectual, by the dishonesty and misbehaviour of the masters of the ships employed by the persons who contract for transporting such felons and vagabonds . . . , by their fraudulently landing and putting on shore the said felons and vagabonds in some part of this kingdom, or some part of Europe . . .

Thus, as remarkable as it is to contemplate, the masters of transport vessels appear to have been dumping Irish convicts in unauthorised locations within 20 years of the system’s initiation and fully four decades before the crisis conditions of the 1780s. After 1744, any such egregious failure by ship masters to fulfil the terms their contract was made a felony punishable by death.<sup>28</sup> No such measure was ever deemed necessary in Britain, and it would be interesting to know whether this statute ever had occasion to be enforced. Subsequent attempts in 1747 and 1751-52 to initiate bills to render “more effectual” the transportation of felons and vagrants suggest a continuing dissatisfaction with the conduct of the system in Ireland.<sup>29</sup>

25 12 Geo.I, c.8 [I], ss.1, 2, 5.

26 3 Geo.II, c.4 [I], ss.1-2, 5. Subsequent acts imposed transportation for stealing metal fixtures (5 Geo.II, c.18 [I] [1732]) and assault with intent to commit robbery (21 Geo.II, c.12 [I] [1748]).

27 *JHCI* 6/7 (1731-48): 867, 870-1, 873, 874, 877, 878, 880, 881, 892, 896, 898, 902, 903, 904 (quote at 896).

28 17 Geo.II, c.4 [I].

29 *JHCI* 6/7 (1731-48): 1112, 1121, 1139, 1149; *JHCI* 8/9 (1749-56): 241, 257, 263, 267.



However, for all their apparent difficulties in enforcing transportation as effectively as had been done in England, Irish legislators – like their counterparts in England – seemed determined to maintain its role in the range of penal practices down to the eve of the American Revolution. As late as March 1772, the Irish parliament initiated but failed subsequently to pass “the Heads of a Bill for the more speedy and effectual Transportation of Felons, and others liable to Punishment of Transportation . . . .”<sup>30</sup> This bill may have been the equivalent of an act passed four years earlier in Britain which sought to expedite the transportation of the most serious class of convicts under sentence of transportation: those whose sentences had been awarded as a condition of pardon from capital conviction.<sup>31</sup> Although the Irish bill failed to progress beyond transmission to Britain, the interest in a new transportation measure strongly suggests that, as in England, the transportation of criminal offenders continued to play a central role in Irish penal practices up to the outbreak of the war with America.<sup>32</sup> Unlike their English counterparts, however, Irish officials seem never to have been able to ensure that the system functioned as regularly and effectively as they desired.

### The Irish Convict Crisis of the 1780s

The initial reaction of Irish legislators to the end of transportation to America in 1775 seems to have been similar to that of the English. The Irish parliament enacted legislation “to authorize for a limited time” the confinement aboard prison hulks of offenders liable to sentence of transportation. As with the Transportation Act of 1719, the Irish Hulks Act was not initiated until the session after its English counterpart had been passed.<sup>33</sup> But subsequent proceedings in the two countries differed strikingly. In the first instance, although begun in October 1776, consideration of the Heads of the Irish hulks bill was not resumed for more than a year. Additional clauses were then proposed sug-

30 *JHCI* 15 (1771-72): 230, 252, 255, 256. Under Poynings’ Law (1494) preliminary versions of Irish legislation had to be reviewed by the English king and council before the formal legislative process could commence in Dublin. Until this approval had been secured, the draft bill was deemed “the Heads of a Bill.” In 1782 this procedure was effectively reduced to British cabinet approval of bills already fully considered by the Irish parliament.

31 8 Geo.III, c.15 [GB].

32 Beattie’s study of sentencing practices in the English county of Surrey demonstrates that the use of imprisonment was expanding after 1750, although the determination to continue enforcing transportation of the most serious classes of offenders is also clear (see *Crime and the Courts*, 538-40, 546-48). See also Ekirch, *Bound for America*, 227, 228-29; and S.P.R. Devereaux, “Convicts and the State: The Administration of Criminal Justice in Great Britain during the Reign of George III,” PhD thesis, University of Toronto, 1997, pp.127-9.

33 16 Geo.III, c.43 [GB]; 17 & 18 Geo.III, c.9 [I]; *Journals of the House of Commons (Great Britain)* 35 (1774-76): 810; *JHCI* 18 (1776-78): 33.

gesting that the Irish hulks should be much larger and more geographically dispersed than those in England. In the late 1770s, there were only two hulks on the Thames, but a clause proposed for the Irish bill in February 1778 suggested hulks on five different rivers.<sup>34</sup> In the event, the final act proposed only one hulk on the River Liffey and even this seems never to have been carried into effect.

The failure to implement the hulks scheme in Ireland may have reflected, and must certainly have reinforced, government gaol reform that in England. Contrary to most historians' picture of English penology, the English hulks scheme had been intended more as an experimental measure of punishment by hard labour than as a means to relieve local gaols of untransported convicts. Its sponsors intended it to serve as a preliminary to the much more ambitious and detailed scheme of a national institution that was outlined in the Penitentiary Act of 1779.<sup>35</sup> Advocates of prison reform in Ireland lacked so ambitious and comprehensive a measure, but they exceeded their English counterparts in their constancy and vigour. Although no truly sweeping measure of prison reform seems to have been implemented, many substantial ones were.

Indeed the issue of prison reform dominated the time and activity of Irish parliamentarians during the 1780s to an extent that advocates of such measures in England never matched.<sup>36</sup> In England, the very scale of the Penitentiary Act proved intensely problematic during a decade in which national politics were largely dominated by the issue of fiscal retrenchment. The government of William Pitt the Younger quickly retreated to a more traditional pattern in which prison reform should voluntarily be implemented by those local authorities who desired it rather than imposed from the centre.<sup>37</sup> In contrast, the Irish parliament created an inspector general for the country's prisons in 1786, 50 years before even a rudimentary prison inspectorate was created in Britain.<sup>38</sup>

Nonetheless, however much the politics of prison reform may have differed between Ireland and England, there was never any serious question in either country that transportation must continue to play a substantial role in their respective ranges of penal practice. In the spring of 1786, following intense concerns over unprecedented levels of criminality and political unrest in the coun-

34 Oldham, *Britain's Convicts to the Colonies*, 51-3; *JHCI* 18 (1776-78): 345.

35 19 Geo.III, c.74 [GB]; G.C. Bolton, "William Eden and the Convicts, 1771-1787," *Australian Journal of Politics and History* 26 (1980): 30-44; Beattie, *Crime and the Courts*, 565-9, 573-6; Devereaux, "Convicts and the State," 144-81, 185-6.

36 Oliver MacDonagh, *The Inspector General: Sir Jeremiah Fitzpatrick and the Politics of Social Reform, 1783-1802* (London, 1981), Chs.2-6 *passim*.

37 Devereaux, "Convicts and the State," 192-217, 334-43.

38 26 Geo.III, c.27 [I]; McDowell, *Ireland in the Age of Imperialism*, 70-77; MacDonagh, *Inspector General*, 76-81. An Inspector of Hulks (but not of prisons) for Great Britain was created in 1802 (42 Geo.III, c.28, s.2).

try, the Irish parliament passed a massive act for policing Dublin.<sup>39</sup> Among its many provisions were sections that required the expeditious transportation of Irish convicts "to some of his Majesty's plantations or settlements in America, or to some other place or places not in Europe . . ." <sup>40</sup> Equally important, this measure at last provided that the removal and transportation of Irish convicts would proceed at national rather than local expense (s.70). Unlike the clauses establishing a professional police force in Dublin, which provoked intense debate amongst MPs, those relating to the renewal and enhanced efficiency of convict transportation appear to have aroused virtually no comment whatsoever.<sup>41</sup>

Only a few months after the passage of the Irish Police Act, the British government announced that, following its own attempts to renew transportation to the former American colonies and the defeat in parliament of a major convict settlement scheme in west Africa, it had at last settled on Botany Bay as a fixed destination for convicts under sentence of transportation. However, the eager anticipation of Dublin Castle that "a similar Mode may be adopted here or some Advantage taken of that adopted in England" was quickly squelched by the government in London. The Home Office informed Irish officials that, although there was reason to hope that a self-sufficient settlement might soon result at Botany Bay, no space could be made for Irish convicts in the First Fleet and "until some Accounts are received from thence, no other emigrations are intended to be permitted."<sup>42</sup> It was by no means certain that a permanent settlement in New South Wales would succeed and, as late as February 1789, the Home Office was still contemplating alternative destinations for convicts in Quebec or Nova Scotia in the event that it should fail.<sup>43</sup> A subsequent letter

39 For the policing aspects of the measure and its larger context, see Stanley H. Palmer, *Police and Protest in England and Ireland, 1780-1850* (New York, 1988), 92-104, 119-36; Hill, *From Patriots to Unionists*, 183-90; and Brian Henry, *Dublin Hanged: Crime, Law Enforcement and Punishment in Late Eighteenth-Century Dublin* (Dublin, 1994), Chs.6-7.

40 26 Geo.III, c.24 [I], ss.64-71 (quote at s.64; see also ss.66, 69); see also MacDonagh, *Inspector General*, 132.

41 "Would any man say that was not a necessary clause?" asked one supporter of the bill, in the only recorded comment on its transportation provisions; see *The Parliamentary Register: or, History of the Proceedings and Debates of the House of Commons of Ireland* (Dublin, 1702-1801), Vol.6 (22 March 1786): 340.

42 Public Record Office (PRO), Home Office Papers (HO) 100/18 ff.342-3, 369-72, Sackville Hamilton to Evan Nepean, 29 September 1786; Nepean to Hamilton, 24 October 1786, draft.

43 PRO, HO 36/6 pp.162-4, 171-2, 198-9, Lord Sydney to the Treasury Lords, 31 October 1788; Evan Nepean to Thomas Steele, 2 December 1788; Nepean to Steele, 22 February 1789. See also PRO, HO 42/14 ff.132-3, William Richards, Jr to the Keeper of Brecon Gaol, 5 February 1789; *The Annual Register* 30 (Chron 1788): 223; and *The Gentleman's Magazine* 58 (1788): 1116. An immense literature has been generated by the debate over the extent to which New South Wales was settled as either a penal expedient or as part of a systematic imperial design. My own views are stated at length in "Convicts and the State," 289-310.

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from the lord lieutenant to the home secretary reiterated the desire of Ireland to be included in any future British arrangements for transportation:

The effectual Execution of Public Justice respecting such Felons appears to me of so much Importance, as well as for the Example as the Security of the Community, that whatever Expense may properly be induced for their Transportation, ought in my Opinion to be borne by this Kingdom . . .<sup>44</sup>

The commitment of Dublin Castle to the renewal of transportation was clear.

What officials in London do not seem to have realised was that a similar commitment amongst local authorities in Ireland had already assumed a much more alarming form. Labouring under a severely strained gaol system and, until 1786, expected to arrange and pay for transportation themselves, they had already taken matters into their own hands. Between November 1784 and November 1789, no less than nine vessels departed Dublin with convicts to be deposited at various locations in North America and the West Indies. Recent historians have made much of England's three small-scale attempts to resume transportation to the Americas between 1783 and 1785, but those voyages seem models of restraint and decorum by comparison with the covert tactics and ultimately disastrous results of the efforts of the Lord Mayor of Dublin to transport a total of about 1,400 convicts to the Americas during the 1780s.<sup>45</sup>

These practices either went undetected or were ignored by British officials until the spring of 1789, when the Lieutenant Governor of Cape Breton Island informed London that one vessel, unable to complete its intended voyage up the St. Lawrence River and into the Quebec interior had simply deposited 105 Irish convicts in his jurisdiction "who from their number and descriptions, are terrifying to the inhabitants of this infant Colony . . ."<sup>46</sup> This incident provoked a forceful statement from Whitehall to Dublin Castle:

The Transportation of Convicts to His Majesty's Colonies in North America is in many respects so objectionable, and particularly on account of the extreme dislike expressed by the Inhabitants of those Colonies to the introduction of Persons of that description amongst them, that it has constantly been avoided here, and a New Settlement has been formed for that purpose on the Coast of New South Wales.

44 PRO, HO 100/18 ff.417-18, Duke of Rutland to Lord Sydney, 16 December 1786.

45 A. Roger Ekirch, "Great Britain's Secret Convict Trade to America, 1783-1784," *American Historical Review* 89 (1984): 1285-91; Oldham, *Britain's Convicts to the Colonies*, Ch.5; Henry, *Dublin Hanged*, 155-62; Devereaux, "Convicts and the State," 291-3.

46 PRO, Colonial Office Papers (CO) 217/105 ff.271-2, William Macarneck to Lord Sydney, 18 December 1788 (source of quote); British Library (BL), Add MS 40180 f.138, Earl Fitzgibbon to Marquis of Buckingham, 20 July 1789 (source of figure); Henry, *Dublin Hanged*, 162-3.

Word of the First Fleet's initial success had been received in London that spring, so the home secretary drafted a letter informing the lord lieutenant of "His Majesty's Command" that the Irish statutory provisions of 1786 should be revised along current British lines, which identified only certain places determined by the King on the advice of his privy council "to which felons and other offenders may be transported." The letter also categorically stated that "you are not to direct or authorise the Transportation of Offenders to the Colonies abovementioned, or to any other part of His Majesty's Dominions than the Coast of New South Wales, or the Islands adjacent thereto."<sup>47</sup>

Unfortunately, a vessel named the Duke of Leinster had already been dispatched for Nova Scotia with 114 convicts on board. In the event, the captain set them ashore on Newfoundland, a colonial outpost in which permanent settlement was strongly discouraged at the time. The merchants there acted quickly to confine them and provided the governor, Admiral Mark Millbanke, with the necessary funds to return 65 of the convicts from whence they came. "Till these wretches came into the Country," Millbanke informed his imperial masters in London,

open and professed Villany, it seems, was little known amongst the lower orders of people engaged in the fishery, but since their arrival, very frequent punishments have taken place for petty Crimes (not very common heretofore) and I am afraid, unless the greatest precautions are taken to prevent it, that the spirit of thieving will soon find too good a root in the Island to be eradicated.<sup>48</sup>

Unfortunately Millbanke brought the convicts with him not to Ireland but to England, and it was here that the potential nature and scale of the problems posed for British government by Irish convict transportation became forcefully apparent.<sup>49</sup>

The matter, which was considered both in the Privy Council and by the law officers of both countries, raised two central issues: a problem of definition in the Irish Transportation Act of 1786; and the significance of Millbanke's action in bringing the convicts back. In the first instance, when Whitehall sought to return Ireland's convicts to her, Dublin Castle replied that the Irish Transportation Act of 1786 did not countenance such a situation. The contract for the transportation of the convicts had been lawfully drawn up and the manner in which the convicts were disposed of in Newfoundland, while improper, was not tech-

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<sup>47</sup> 24 Geo.III (2nd session), c.12 [GB], s.1; PRO, HO 100/27 ff.216-19, William Grenville to the Lord Lieutenant of Ireland, 27 July 1789 (draft).

<sup>48</sup> PRO, CO 194/38 ff.86-7, Mark Millbanke to William Grenville, 20 September 1789.

<sup>49</sup> Accounts of this incident and its significance may also be found in Martin, "Convict Transportation to Newfoundland," 84-99, and Henry, *Dublin Hanged*, 163-4.

nically illegal under the terms of the 1786 Act. Moreover, since the convicts had not willingly returned, but rather had been forcibly sent back by a British official, none of the convicts could be tried for returning from transportation. The legal points were debated in London and Dublin alike and a rough-and-ready solution devised.<sup>50</sup> Future difficulties were forestalled when, in March and April 1790, the Irish parliament at last made good on Whitehall's instructions of eight months earlier to provide legislation for transporting "all felons and vagabonds who now are, or shall be under any sentence, rule, or order of transportation, to be transported and conveyed to such part or parts beyond the seas, and in such manner as the lord lieutenant . . . shall think proper . . .," thereby circumventing the critical problem of having specified the American colonies, or any other place, as the destination.<sup>51</sup>

These were essentially technical issues. The matter might not have had the degree of immediacy and urgency that it did had Governor Millbanke not brought the convicts to England in the first place, and it is in this action that the more significant, long-term implications of the Newfoundland incident are to be found. More than any letters of protest from colonial governors or any colonial statute seeking to limit or forbid convict transportation, Millbanke's action on behalf of the Newfoundland merchants signified to British officials the potential dangers of disregarding the opposition of her remaining American colonies to receiving any more convicts. Irish officials protested that those same colonies had received Ireland's convicts without apparent difficulty from several other voyages over the past five years and that the British government itself had seemed to countenance its continuation by allowing the passage of the Irish Transportation Act of 1786.<sup>52</sup> Why then should the high-handedness of one colonial governor be tolerated? "I never conceived that the King's assent to an Irish Act of Parliament could give it force in the King's colonies," the chief secretary protested. However, once sanctioned by British authority, "it was a justifiable presumption that the English law enabled the Governors of the British colonies to receive them, and that his Majesty's instructions ordered them to do so."<sup>53</sup>

50 Historical Manuscripts Commission (HMC), 30th Series, *Manuscripts of J.B. Fortescue, Esq. Preserved at Drogheda (Drogheda MSS)* (London, 1892-1927), Vol.1, pp.540-60; PRO, HO 48/1B, Attorney and Solicitors General to [William Grenville], 15 January 1790; Martin, "Convict Transportation to Newfoundland," 93-6.

51 30 Geo.II, c.32 [I]; *JHIC* 27 (1790): 57, 160, 169-70, 175, 205, 206, 218, 226, 247, 279, appendix cxcix-cc; PRO, HO 100/27 ff.295-6, Lord Fitzgibbon to William Grenville, 1 December 1789.

52 HMC, *Drogheda MSS*, Vol. 1, pp.545, 546-8, Robert Hobart to William Grenville, 1 December 1789; Lord Fitzgibbon to Grenville, 2 December 1789.

53 The response to this line of reasoning was that Newfoundland's precise legal status was that of neither "colony" nor "plantation" and that therefore the landing of convicts there was not within the terms of the 1786 Act; see HMC, *Drogheda MSS*, Vol. 1, pp.549, 552-3, William Grenville to Lord Fitzgibbon, 2 December 1789; same to same, 9 December 1789.

Irish officials could protest their good faith as much as they desired, but they were missing the larger point. The home secretary had already informed the lord lieutenant, in July 1789, that only Botany Bay would be an acceptable destination for transports, precisely because it was already understood and recognised in Britain that her remaining American colonies were intractably opposed to receiving convicts who, by definition, were deemed too dangerous to be kept at home. In sanctioning practices such as that which had occurred in Newfoundland, the Irish government was condoning

an act of extreme cruelty to the convicts, who, being turned on shore without any of the necessities of life, are either left to starve, or (as has sometimes been the case) are massacred by the inhabitants.

The sentence, after all, was transportation and not death. But even more to the point for present purposes,

as to transporting to the King's American colonies, you may depend upon it that, after the example set them by Admiral Milbanke, none of our Governors will suffer any of these people to be landed in their governments; and that, if landed by stealth, they will send them back at a heavy expense which must fall upon the Irish government.<sup>54</sup>

It was soon recognized that, in fact, the home secretary's letter of July 1789 had apparently not been forwarded to the relevant Irish officials by the lord lieutenant. However, a copy of an instruction to the same effect from the lord lieutenant to the lords justices of Ireland also exists, so it is unclear whether or not the message had been received.<sup>55</sup> Even so, professions of ignorance on the part of Irish officials missed the larger point that had already been accepted in Britain: that transportation to any place other than Botany Bay was not so much legally dubious as it was politically impractical.

Unfortunately, this was not to be the end of the matter. In November 1789, even before the British government had learned of the trouble in Newfoundland, the *Duke of Leinster* had already departed Dublin yet again, this time with nearly 200 convicts for the Leeward Islands. Two months before the Irish parliament quickly passed its new Transportation Act, the tiny populations of those islands were experiencing the last rude shocks of previous practices. On New Year's Day 1790, 54 convicts were set ashore on Barbuda. Three days later an

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54 HMC, *Dropmore MSS*, Vol.1, p.543, William Grenville to Robert Hobart, 25 November 1789 (private).

55 BL, Add MS 59251 ff.34-5, 138-41, 142-3, Marquis of Buckingham to the Lords Justices of Ireland, 11 July 1789; William Grenville to Robert Hobart, 14 December 1789; Hobart to Grenville, 22 December 1789.

attempt was made to land others on Antigua. Two weeks after that, when the governor of the islands learned that the *Duke of Leinster* had also tried to set convicts ashore at Anguilla, he gave orders for the arrest and detention of her captain and the remaining convicts. Officials in the islands deemed the Irish convicts to be "an evil pregnant with the most dangerous consequences." The residents of Antigua in particular were convinced that "they will probably continue their Habits of thieving & housebreaking – & what is still worse will corrupt the Negroes to a very mischievous & lasting degree . . ." <sup>56</sup>

Collusion or ineptitude on the part of lesser officials in Dublin Castle may have played a part in the sequence of events leading up to this last and most offensive attempt to transport convicts from Ireland to the Americas. Unlike the Newfoundland voyage, this second voyage of the *Duke of Leinster* had been commissioned four months after London's explicit instruction of July 1789 that Irish transports should be sent nowhere other than New South Wales. Indeed, two weeks before the issuance of that instruction, the lord lieutenant himself had also issued orders that this should be the mode of proceeding with all Irish felons reprieved on condition of transportation. More to the point, as with all convict voyages since the act of 1786, the ultimate responsibility for payment of the contractors lay with the Irish treasury.<sup>57</sup> The chief secretary of Ireland protested that the contract for the Leeward Islands voyage had been executed a month before the crisis of the Newfoundland convicts had burst upon British officials, but this did not answer these last two points.<sup>58</sup> In the event, Whitehall did not press the point, partly because passage of the new act now rendered the matter academic and partly because both the second departure of the *Duke of Leinster* and the confusion amongst Irish officials had already been known from mid-December 1789.<sup>59</sup> At any rate, the contract itself, signed by the Sheriff of Dublin and later relayed to London, made explicit both the desperation and the self-consciously covert character of the endeavour. The Sheriff of Dublin advised the captain to

56 PRO, CO 152/69 ff.34-5, Thomas Shirley to William Grenville, 12 March 1790; see also PRO, CO 152/70, William Codrington to Evan Nepean, 13 March 1790; and Henry, *Dublin Hanged*, 166-7.

57 BL, Add MS 59251 ff.34-5, Marquis of Buckingham to the Lords Justices of Ireland, 11 July 1789; *JHCI* 27 (1790): appendix cxcix.

58 PRO, HO 100/29 ff.147-8, 192-3, Evan Nepean to Robert Hobart, 18 March 1790 (private/draft); Hobart to Nepean, 25 March 1790 (private).

59 See the references at note 55 above. Chief Secretary Hobart told Home Secretary Grenville that he believed the vessel was bound for Nova Scotia and hoped that the convicts might be set ashore there with no difficulties. In fact, it was specifically contracted for the Leeward Islands. Grenville's care not to embarrass the lord lieutenant of July 1789 may also have been informed by the fact that the latter was his elder brother.



divide the whole [of the convicts] among [the islands], but not a great many at one place, for fear of a commotion – ; & tell them, on leaving you, the advantage it will be to them that they conceal what they are – & that should their future behaviour be good, that they may get to be caretakers, & in Situations of trust in the Plantations . . . .

He concluded on an undoubtedly heartfelt note: “I am wishing you health & a good Voyage.”<sup>60</sup>

If further outrages were to be avoided in the Americas, it seemed clear that Britain would have to provide both destination and shipping for Irish convicts. Access to the Botany Bay settlement had been denied in 1786 and would still have to be carefully limited in 1790 given the uncertainty about its future prospects. Nevertheless, the chief secretary of Ireland wrote:

The Obstructions given of late to the landing Persons of this Description in any of the United States of America and the prohibition in the British Colonies and Plantations against their being received there, makes it impractical for the Government of this Kingdom to transport Convicts out of this Country, unless they be assisted by Great Britain in the sending them with the Convicts from thence.<sup>61</sup>

But Irish officials also shared a major concern with their British counterparts: the immense cost of the voyage to New South Wales, given both the distance and the need to support the colony with supplies and a military guard until it achieved a degree of self-sufficiency. “Various schemes are in agitation to dispose of the Felons, either in the public works or solitary imprisonment,” the lord lieutenant noted of recent Irish legislative efforts. “I am in hopes, after we have cleared our Jails of the present incumbents, we shall not trouble Botany Bay with such numbers as can make an increase of force necessary.”<sup>62</sup> Unexpectedly faced with a third major effort at clearing their own gaols and hulks of transportable convicts, British officials were preoccupied with finding ways of rendering the voyage to New South Wales more cost-effective, so it was not until January 1791 that Dublin Castle was at last informed that space would be made for 200 Irish convicts in the Third Fleet.<sup>63</sup>

60 PRO, CO 152/70, Instructions of Sheriff of Dublin to Capt. William Christian, Dublin, 4 November 1790.

61 PRO, HO 100/29 ff.202-4, Robert Hobart to Evan Nepean, 25 March 1790.

62 BL, Add MS 59251 ff.172-3, Earl of Westmorland to William Grenville, 17 March 1790; see also PRO, HO 100/29 ff.5-6, Robert Hobart to Evan Nepean, 8 January 1790; and HO 100/30 ff.184-85, Westmorland to Grenville, 2 October 1790 (private).

63 PRO, HO 122/2 ff.81-2, William Grenville to the Lord Lieutenant of Ireland, 31 October 1790; and HO 100/32 ff.4-5, unknown to Robert Hobart, 5 January 1791 (draft); see also Devereaux, “Convicts and the State,” 319-21.

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Thereafter the transportation of Irish convicts to New South Wales was provided for, at cost, by Great Britain, for it was still unquestioned – on both sides of the Irish Sea – that transportation remained the only appropriate means short of death of punishing the most serious classes of offenders. A major penitentiary experiment had been undertaken in Dublin. “If such a Plan should be found practicable,” the chief secretary informed London,

it will not however alter the Wishes of [the Irish] Government to transport beyond the Seas Felons whose Crimes are atrocious, or whose desperate Inclinations afford little Promise of their being better’d by milder Punishment.<sup>64</sup>

Nor did the Irish government seem to have been particularly impressed with the subsequent results of their penitentiary endeavours. Two years later, the chief secretary declared that:

We have not any Means of employing our Convicts at Home so as to expect a Reformation in their Conduct, To turn them loose upon Society would be the most objectionable of all Measures: they cannot now be sent to any of the British Colonies, we must therefore depend on the Assistance of Great Britain in transporting them to New South Wales.<sup>65</sup>

In the event, Irish convicts constituted an impressive proportion, more than one-third, of all convicts transported to New South Wales between 1792 and 1800.<sup>66</sup> This is considerably larger than the 21 per cent for the period 1788-1815 overall and may reflect both a notable swing towards severity in the administration of Irish criminal law during the 1790s and a particular emphasis on the application of transportation to political offenders, especially after the Rebellion of 1798.<sup>67</sup> It certainly reflected the continuing determination of the Irish government to be rid of what the lord lieutenant of 1790 ironically deemed to be “these valuable persons. The less we hear of them in Europe, & particularly in Ireland, the better.”<sup>68</sup>

64 PRO, HO 100/29 ff.202-4, Robert Hobart to Evan Nepean, 25 March 1790; see also PRO, HO 100/30 ff.180-1, 184-5, Hobart to Nepean, 22 September 1790 (private); Earl of Westmorland to William Grenville, 2 October 1790 (private).

65 PRO, HO 100/37 ff.281-2, Robert Hobart to Evan Nepean, 28 September 1792. For the Irish penitentiary experiment, see MacDonagh, *Inspector General*, 133-41.

66 Eris O’Brien, *The Foundations of Australia (1786-1800): A Study in English Criminal Practice and Penal Colonization in the Eighteenth Century*, 2nd ed. (Sydney, 1950), 286.

67 38 Geo.III, c.78 [I]; 40 Geo.III, c.44 [I]; Connolly, “Albion’s Fatal Twigs,” 120-1; George Rudé, *Protest and Punishment: The Story of the Social and Political Protesters Transported to Australia, 1788-1868* (Oxford, 1978), 71-4; P.J. O’Farrell, “The Irish in Australia and New Zealand, 1791-1870,” in *A New History of Ireland, Vol.5: Ireland under the Union (I) 1801-70*. W.E.Vaughan, ed. (Oxford, 1989), 661-2.

68 BL, Add MS 59251 ff.172-3, Earl of Westmorland to William Grenville, 17 March 1790; see also PRO, HO 100/29 ff.192-3, Robert Hobart to Evan Nepean, 25 March 1790 (private).

## Convicts and the Reach of the State

In a 1975 article, Ged Martin argued that, "either as cause or confirmation," the Newfoundland convict incident ended any further likelihood of resuming convict transportation to British North America.<sup>69</sup> Consideration of the longer history of Irish transportation, however, suggests that such an interpretation is both inaccurate and too narrowly conceived. It is inaccurate in so far as London's correspondence with Dublin Castle in July 1789 about the Irish convicts in Cape Breton clearly indicates that, after word had come back in March of that year that the initial settlement in New South Wales was a success, British officials had already determined it to be the only acceptable destination for transports. But Martin's interpretation is also too narrow in so far as it understates just how wide-ranging and alarming Irish transportation practices and their implications had become by the late 1780s.

In the previous section, I observed in passing that Whitehall regarded any resumption of convict transportation to Britain's remaining American colonies as politically impossible after the mid-1780s. But why should this have seemed to be the case? Here, I want briefly to argue that the decision of the British government to assume direction of the transportation of Irish convicts was, if not exactly driven, certainly strongly underpinned by immense changes that had taken place in society and economy both at home in the British Isles and throughout the British Atlantic empire over the course of the eighteenth century, as well as by pressing new political realities in the administration of both areas by its end. That British officials were ready to take over the transportation of convicts for both Britain and Ireland reflected and reiterated changing patterns of perception of the extent of the British state.

These changes were apparent, first, in the approach to the question of removing convicts from the British archipelago as a whole. The key change involved at home was the vast increase in the speed and frequency of transport and communication that took place in Britain over the course the eighteenth century. Intensive turnpike construction had begun in the early years of the century, but the 30 years after 1750 saw the greatest reduction in travel time. So remarkable was this rapid expansion in physical mobility that it generated its own literary genre.<sup>70</sup> This awareness of enhanced mobility, coupled with the difficulties that the British government experienced in determining a new destination for convicts under sentence of transportation after the conclusion of the

<sup>69</sup> See above at note 4.

<sup>70</sup> John A. Chartres and Gerald L. Turnbull, "Road Transport," in *Transport in the Industrial Revolution*. Derek H. Aldcroft and Michael Freeman, eds. (Manchester, 1983), 64-80; Paul Langford, *A Polite and Commercial People: England, 1727-1783* (Oxford, 1989), 391-410; John Rule, *The Vital Century: England's Developing Economy, 1714-1815* (London, 1992), 216-25 (esp. 223).

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American Revolutionary War in 1781, gave the problems of local officials in transporting their convicts a far more immediate and alarming character than it had ever had before. Whitehall would almost certainly have recognised an obligation to help facilitate transportation for the English provinces simply because of the need to maintain the credibility of the criminal law. But the alarm that the prospect of hundreds of serious offenders housed in antiquated and sometimes physically decrepit gaols is not to be underestimated. The contrast between this situation and the efficiency with which such convicts had previously been dispatched from Britain between 1718 and 1775 contributed fundamentally to a profound sense of alarm while the British government sought a new destination for transports between 1783 and 1786.

The result was an interaction between centre and periphery in England that was unprecedented in both volume and regularity. Virtually every official who requested that government relieve their gaol cited the latter's potential incapacity securely to hold large numbers of dangerous offenders. A minimum of five publicly reported gaol-breaks in the latter half of 1784 alone must have lent much credence to the belief that the disposition of convicts throughout the nation could justly be considered a problem for government.<sup>71</sup> A newspaper report of December 1786 describing preparations for the departure of the First Fleet for Botany Bay strongly suggests anxiety about the ready mobility of dangerous offenders:

Private letters from Portsmouth describe that town and neighbourhood to be infested with numerous groups of thieves and robbers, that scarce a night passes, in which some persons are not robbed, or some houses broken open. The villains are supposed to have belonged formerly to the hulks at Woolwich, and to have come down to see their former friends and companions.<sup>72</sup>

Similarly, the magistrates of tiny Flintshire in northern Wales asked the government to remove four transports from their gaols whom they believed to be "part of a Gang of twelve or more, who about three months ago came from the neighbourhood of Manchester and Liverpool . . .".<sup>73</sup> To the extent that enhanced mobility had profoundly impressed itself on the minds of British statesmen, the convicts of the provinces had become a problem for the nation at large in a way that they had never seemed to be before 1775 when transportation had proceeded unproblematically.

More alarming still was the possibility that some local officials might simply ship convicts away on their own initiative. This appears to have been a real

71 See the newspaper reports in Duncan Sprott, ed., *1784* (London, 1984), 158, 170, 197-8, 310-11, 291-3.

72 Quoted in J.H. Thomas, *Portsmouth and the First Fleet, 1786-1787* (Portsmouth, 1987), 21.

73 PRO, HO 42/14 f.118, Richard Mostyn to Lord Sydney, 8 May 1789.

option for those in or near to port towns and who had a small enough number of convicts that the discrete disposition of them somewhere in the Americas was unlikely to attract attention. In April 1785, the magistrates of Poole transported five convicts to Newfoundland. Only two months earlier a member of parliament for Devon ominously mused that, if the government did not soon relieve the gaol of Plymouth, "We must take redress elsewhere."<sup>74</sup>

Irish transportation practices during the 1780s forcefully showed London officials that the whole of the British Isles was involved. Indeed, Irish officials were actively doing what most local officials in England could only threaten to do. It might seem all too easy to exaggerate the extent to which improvements in transportation really did enable escaped criminals to travel greater distances throughout the British Isles, but against this may be cited the evidence of the British government's warrant books. Whenever a Scottish or Irish convict was discovered at large in England, a formal warrant had to be issued for their return whence they came, and the number of such warrants was noticeably increasing after the mid-eighteenth century.<sup>75</sup> This cumbersome practice was obviated by the passage of legislation to provide more simplified routines for returning escaped convicts from one part of the British Isles to another, and the timing of these measures, first for Scotland and then for Ireland, suggests the increasing urgency of the threat that officials in London thought themselves to be dealing with by the end of the eighteenth century. The Act providing for this contingency between England and Scotland was not passed until more than half a century after the Union of 1707; that between Britain and Ireland was passed only three years after the Union of 1801.<sup>76</sup>

Nor were concerns about improved transportation and changing ideas about the reach of the British state solely confined to the British Isles. The determination of British officials not to force convicts upon the remaining Atlantic colonies after their own limited and largely unfortunate efforts to do so in the early 1780s must, in some measure, have reflected a pragmatic understanding that, after a disastrous war in America, tensions with Britain's remaining Atlantic colonies were best avoided. Colonial policy during the 1780s continues to be a notably understudied field. Generalisations are hazardous, but V.T. Harlow's pic-

74 Memorial University Manuscripts, Diary of Benjamin Lester, entries for 25 and 28 April 1785 (my thanks to Jerry Bannister for this reference); PRO, HO 42/6 f.62, J.P. Bastard to Lord Sydney, 4 February [1785].

75 These warrants can be found in PRO, SP 44/77-96, HO 13, HO 104 and HO 122.

76 13 Geo.III, c.31 [GB] (1773); 44 Geo.III, c.92 (1804).

77 Vincent T. Harlow, *The Founding of the Second British Empire, 1763-1793*, Vol.2: *New Continents and Changing Values* (London, 1964), Ch.10 (quote at 663). For general accounts of similar tensions prior to the Revolution see, more recently, Jack P. Greene, *Peripheries and Center: Constitutional Development in the Extended Politics of the British Empire and the United States 1607-1788* (Athens, GA, 1986); and P.J. Marshall, "Empire and Opportunity in Britain, 1763-75," *Transactions of the Royal Historical Society 6th series*, 5 (1995): 111-28.

ture of a concern to reconcile "metropolitan authority with the claims of colonial self-management" still seems broadly accurate.<sup>78</sup> More recent scholarship tends particularly to emphasise the effort of the British imperial centre to ensure obedience in the peripheries, most notably in the decidedly conservative and aristocratic arrangements made for the governance of Canada in 1791.<sup>79</sup> However, no other overt actions were taken to redefine the means by which colonies should be governed, and Whitehall's behaviour towards the remaining Atlantic colonies during the 1780s is perhaps best characterised as one of benign neglect.<sup>80</sup> It has recently been suggested that Nova Scotia and the newly created New Brunswick, which, it is worth noting, together constituted the most populous area of British North America after 1776, fared rather better than the West Indies.<sup>81</sup> In any case, overt difficulties were clearly to be avoided. By 1785 it had become equally clear that British convicts landed on any of the Atlantic colonies against the express will of their populace would be considered very heavy-handed.

Nor was political pragmatism all that was at work. The British government's determination not to send convicts to any part of her remaining Atlantic colonies must also have reflected its sense of the common cultural identity that was thought to prevail in the British Atlantic world. The existence of a broad sense of economic and cultural integration has recently been forcefully argued by David Hancock in his close study of a small but influential group of London merchants between 1735 and 1785.<sup>82</sup> Conversely, the extent to which American interest groups were able to make their desires heard in the imperial centre has also been analysed by Alison Gilbert Olson.<sup>83</sup> Of course, we must be careful

78 John Manning Ward, *Colonial Self-Government: The British Experience, 1759-1856* (London, 1976), 13-20; Fernand Ouellet, *Lower Canada, 1791-1840: Social Change and Nationalism* (Toronto, 1980), 20-7 (esp. 20, 23); David Milobar, "Conservative Ideology, Metropolitan Government, and the Reform of Quebec, 1782-1791," *International History Review* 12 (1990): 46-64.

79 W.S. MacNutt, *The Atlantic Provinces: The Emergence of Colonial Society, 1712-1857* (Toronto, 1965), 103-11; Hilda Neatby, *Quebec: The Revolutionary Age, 1760-1791* (Toronto, 1966), 257-60; Selwyn H.H. Carrington, *The British West Indies During the American Revolution* (Dordrecht and Providence, RI, 1988), 138-39, 158-61.

80 Ann Gorman Condon, "1783-1800: Loyalist Arrival, Acadian Return, Imperial Reform," in *The Atlantic Region to Confederation: A History*. Phillip A. Buckner and John G. Reid, eds. (Toronto and Fredericton, NB, 1994), 184-209 (esp. 187-95).

81 David Hancock, *Citizens of the World: London Merchants and the Integration of the British Atlantic Community, 1735-1785* (New York, 1995), 2-3, 13-18, 20-1, 25-39, 119-23, 383-95; see also T.H. Breen, "An Empire of Goods: The Anglicization of Colonial America, 1690-1776," *Journal of British Studies* 25 (1986): 467-99.

82 Alison Gilbert Olson, *Making the Empire Work: London and the American Interest Groups, 1690-1790* (Cambridge, MA, 1992).

83 Jack P. Greene, *Pursuits of Happiness: The Social Development of Early Modern British Colonies and the Formation of American Culture* (Chapel Hill, NC, 1988); H.V. Bowen, *Elites, Enterprise and the Making of the British Overseas Empire, 1688-1775* (Houndmills, 1996), part two, Ch.7.

not to overstate the degree of cultural congruity between Britain and her ultimately rebellious colonies. The fact of the Revolutionary War itself suggests that we need to assemble a more complicated notion of social, political and cultural identity in the eighteenth-century British North America than perhaps either of these studies suggests, one that embraces not only commonalities but also complexities and contradictions. A substantial effort to describe the latter has previously been made by Jack P. Greene, while a recent work by H.V. Bowen seeks to explore both commonality and divergence.<sup>84</sup>

Nevertheless, there does seem to have been a broad congruence amongst eighteenth-century British imperial citizens as to the basic claims of life, liberty and property. The American Revolution has been convincingly described as simply one resolution – but not necessarily the only or inevitable one – to contradictions that were inherent in political culture and ideology on both sides of the Atlantic.<sup>85</sup> The existence of a common political and cultural identity in the British Atlantic territories, and in particular one that was deeply implicated in the transportation of convicts, was clearly and forcibly expressed in the indignant protestation of one resident of the Leeward Islands that “[the Sheriff of Dublin] under Authority of Government makes War of the worst kind upon his fellow subjects.”<sup>86</sup> Viewed from this perspective, it is not surprising that a permanent destination for transported convicts was ultimately to be found in the south Pacific, far outside the established realms of imperial trade and citizenship.<sup>87</sup> Alan Atkinson has recently interpreted developments in the administration of transportation during the eighteenth century as being symptomatic of an increasingly authoritarian imperial centre.<sup>88</sup> But he is wrong to imply that such views obtained for the empire as a whole and that Whitehall viewed the new convict settlement in New South Wales as a part of the empire like any other. At the time it was founded, its uniqueness was both clear and vitally necessary.

More prosaic realities were also involved. The cultural integration of the British Atlantic territories was sustained and enhanced by an explosion in trade that took place during the eighteenth century. The administrative implications of the developments associated with it were profound. Of most immediate

84 Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge, MA, 1967).

85 PRO, CO 152/70, William Cortempton(?) to William Codrington, 3 October 1790.

86 Against both political expedience and common imperial citizenship might be weighed the fact that, as late as December 1788, Nova Scotia remained the back-up option for a penal colony in the event that the initial settlement at New South Wales failed (see PRO, HO 36/6 pp.171-2, Evan Nepean to Thomas Steele, 2 December 1788). But Botany Bay was the preferred destination and clearly, in part, for the reasons that I describe here.

87 “The Free-Born Englishman Transported: Convict Rights as a Measure of Eighteenth-Century Empire,” *Past and Present* 144 (August 1994): 88-115.

88 These developments are powerfully described in Hancock, *Citizens of the World*, part two.

relevance to the present subject, the vast expansion of the Atlantic economy, particularly after 1763, brought with it an enhanced volume, speed and regularity in trans-Atlantic passages.<sup>89</sup> A perception that it was now easier for transported convicts to return home and renew their depredations on society, and that many were indeed doing so, had become widespread in Britain as early as the 1750s.<sup>90</sup> It must, therefore, have been all the more alarming that by the 1780s, and just as they were beginning to relieve their own convict crisis, British officials suddenly learned of the apparent frequency with which their Irish counterparts had been disposing of convicts throughout the Americas without Whitehall even knowing. The large-scale and rapid sequence of events between December 1788 and March 1790 must have aroused visions of a colonial free-for-all in the redistribution of convicts. That this must ultimately become a serious problem for Britain as well had been brought home forcibly by the actions of Newfoundland's governor in sending the Irish convicts to Britain. The actions of the governor of the Leeward Islands in sending more than 30 of the Irish convicts landed there on to the former American colonies emphasised this. The fear of such unilateral actions was serious enough to warrant a categorical instruction to the latter that "You will on no account give Your Assent to any Act of that nature which may be brought forward" by the colonial assembly.<sup>91</sup>

For both prosaically technical and more nebulous political-cultural reasons then, officials in London were soon convinced that Ireland's determination to transport convicts could all too easily become a serious problem, especially if any more outraged colonies sent their transports either to Britain or the United States. The home secretary at that time made a remark whose significance is worth emphasising:

No convicts have been transported from this country [ie., Britain] to any of the British colonies in America since the last peace, and all the colonies have uniformly expressed a decided resolution not to receive them. *And under these circumstances, I think it might very well be doubted, whether the degree of legislative authority which is allowed even to the British Parliament, would extend so far as to compel the admission of persons of this description into the colonies, or to authorize their confinement and servitude when they are there.*<sup>92</sup>

89 Beattie, *Crime and the Courts*, 540-1; Ekirch, *Bound for America*, 209-22.

90 PRO, CO 152/69 ff.34-5, 38-40, Thomas Shirley to William Grenville, 12 March 1790; Grenville to Shirley, 22 May 1790 (source of quote).

91 HMC, *Dropmore MSS*, Vol.1, 548-9, William Grenville to Lord FitzGibbon, 2 December 1789 (emphasis added).

92 Ekirch, *Bound for America*, 138-9.



When set alongside the frequent refusals to allow colonies to legislate against receiving convicts earlier in the century, this seems a remarkable volte face on the part of British government.<sup>93</sup>

Considering both the administrative imperative for Britain and Ireland to continue to transport convicts, as well as the political advisability of ensuring that this be done in a way which caused the least disruption in the British Atlantic world, London officials decided that practical necessity must take precedence over prevailing constitutional facts. If transportation was to be effective, Britain had to provide it not only for itself but for another jurisdiction that was technically external to it. Just as the provinces had succeeded in doing at home, so too was the imperial periphery, both in Ireland and throughout the Atlantic world, impressing its desires on the centre. Both because it seemed politically unwise, and perhaps even morally wrong, to impose the human detritus of Britain and Ireland on fellow imperial citizens and, more simply and urgently, because of the danger of colonial officials taking it upon themselves freely to redistribute Britain's convicts as they saw fit, by 1788, Whitehall insisted that all future convict voyages must go to New South Wales alone and, not long after, it took upon itself the principal responsibility for ensuring that they got there.

## Conclusion

I have sought to argue in this paper, first, that the haphazard manner in which Irish officials sought to rid themselves of their convicts in the late 1780s was prefigured in situations and practices which long predated that decade and, second, that its consequences were of great significance to the way that officials in London were re-imagining the extent of the British state and its relationship with its dependencies. The transportation of convicts from Ireland during the eighteenth century had never been carried out as effectively as had that from Britain, primarily because the Irish government was not committed to the endeavour in the way that the British one had been from the outset. Even after this was partially rectified in 1786, Dublin Castle still left the task of organising the Irish convict trade largely to the discretion of local officials. What followed was a rapid sequence of appalling incidents in Cape Breton, Newfoundland and the Leeward Islands.

Before the Newfoundland crisis erupted, British officials had already determined that only New South Wales would be acceptable as a site to which convicts might be transported, but they procrastinated over allowing Irish

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93 Thomas Bartlett, "'A People Made Rather for Copies than Originals': The Anglo-Irish, 1760-1800," *International History Review* 12 (1990): 11-25; Jacqueline Hill, "Ireland Without Union: Molyneux and His Legacy," in John Robertson, ed., *A Union for Empire* (Cambridge, 1995), 271-96; Hill, *From Patriots to Unionists*, 119-22, 130, Ch.10.

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convicts to be sent there given their uncertainties over the new settlement's viability and cost. By 1790, Whitehall not only permitted convicts to go to New South Wales, but also accepted responsibility for ensuring their departure and arrival because it found itself subject to increasingly intractable cultural and geo-political realities. No British colony in North America was willing to accept convicts in the numbers that were required, and the dispatch of unwanted Irish convicts from Newfoundland to Britain and from the Leeward Islands to the United States suggested that the colonies might well be as unscrupulous in their determination not to receive them as Irish officials had been in their efforts to dispose of them in the first place. British provision for the transportation of Irish convicts was motivated not simply by a respect for the desires of colonial officials in America, but also by a very real fear of the potential consequences of colonial reprisals if the British government did not take the matter in hand.

The disposal of convicts from the British Isles was, therefore, being carried on in a unified manner a decade before its two constituent nations were constitutionally joined. This unified approach to a shared administrative difficulty is the more striking in so far as the legislative Union of 1801 was not seen as imminent in 1790 and the idea of it had long been fiercely resisted in Ireland. The exigencies of the situation dictated the necessary response. The extent to which the common conduct of transportation prefigured other impulses toward a more unified administration of criminal justice, as well as a more thorough unification of the two kingdoms, are subjects that must await further study.